

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.166 OF 2004
IN
WRIT PETITION NO.1543 OF 1988

Sumermal M. Bafna and ors. ...Petitioners

v/s

State of Maharashtra and ors. ...Respondents

and

Aspi R. Sattha ...Applicant

Mr A.Y. Sakhare i/b Mr V.V. Khemka for Applicant in
support.

Mr V.B. Naik with Mr Vivek Kantawala i/b M/s Kantawala
and Co. for Petitioners to show cause.

CORAM : D.K. DESHMUKH AND A.A. SAYED JJ.

DATE : 20TH JANUARY 2009

P.C. :-

1. This is a notice of motion taken out by a person who claims through original respondent No.6 - Mrs R.C. Patuck in writ petition No.1543 of 1988. The applicant claims that there is a probated will executed by Mrs R.C. Patuck in his favour. This notice of motion has been taken out seeking an order setting aside the order dated 11th February 1992 passed by the Division Bench of this Court in writ petition No.1543 of 1988 on the ground that this Court disposed off the petition by that order on the basis of the minutes of order which were signed by the petitioners and Advocates for respondent Nos.1 to 3 without the writ petition ever being served on respondent No.6. It is claimed that the original petitioners secured the order by suppressing the fact that they have not served the newly added respondents with the petition from the Court. The relevant facts are that writ petition No.1543 of 1988 was filed by four petitioners - (1) Sumermal M. Bafna; (2) Sureshkumar S. Bafna; (3) Prakashkumari Prithviraj Bafna and (4) Sohanraj Achalaji Kaveri challenging the order dated 4th May 1988 passed by the Special Land Acquisition Officer and Notification dated 6th May 1988 issued by the Special Land Acquisition Officer. To that

petition, initially State of Maharashtra, Maharashtra
Housing and Area Development Authority and Special Land
Acquisition Officer were joined as respondents. It
appears from the record of that writ petition that a
chamber summons was taken out by certain persons for
being joined as respondents in that petition. The order
was made on 18th august 1989 and petitioners were
directed to join the applicants in that chamber summons
as respondents. Perusal of the record shows that in the
order which is challenged in the writ petition, the
property which the petitioners claim to be owned by them
was acquired under the provisions of the Maharashtra
Housing and Area Development Act 1976 for the benefit of
the occupiers of the building so that the building could
be better preserved or a new building could be
constructed in place of old building and this was to be
done for the benefit of the occupiers of the building.
It therefore appears that the occupiers who were
applicants in the chamber summons referred to above were
necessary parties to the petition but the petitioners
did not join them as parties and therefore, the Court
directed that they should be joined as respondents. It
appears that that amendment was not immediately carried
out in the petition, but ultimately it was carried out
and Mrs R.C. Patuck was joined as respondent. In that
petition, minutes of order were signed by the Advocates
for petitioners and the Advocates for respondent Nos.1

to 3 and on 11th February 1992, the Court passed order in terms of minutes of order and disposed off the petition. Perusal of minutes of order shows that by that order, the Court set aside the order of the Special Land Acquisition Officer dated 4th May 1988 as also the Notification issued by the Special Land Acquisition Officer. Thus, as a result of the minutes of order, writ petition stood allowed. The net result was that by an unreasoned order passed in the absence of necessary parties who were actually joined as respondents but never served with the petition, the Court set aside orders that were made for the benefit of the unserved respondents. In the affidavit filed in the present notice of motion the applicant has in categorical terms stated in paragraph 8 that the petitioners never bothered to serve the original petition or the amended petition on the deceased respondent No.6 till the order was passed on minutes of order by the Division Bench of this Court. The notice of motion is opposed only by the original petitioners. They have filed their affidavit in reply and in reply so far as allegations made in paragraph 8 of the affidavit filed in support of the motion is concerned, the petitioners do not deny that the notice of the petition was not served on the newly added respondents generally and on deceased respondent No.6 specifically. The date of death of respondent No.6 is 15th September 2001. Thus, when the order was passed

disposing off the writ petition, she was alive. Therefore, it is clear from the record that when the court disposed off the petition in favour of the petitioners without the petitioners serving the respondents who were added as respondents pursuant to the Court's order. It is clear that the order of the Court disposing off the petition was made in violation of principles of natural justice in all probability because the petitioners did not point out to the Court that despite the Court's order, the petitioners did not serve the petition on the newly added respondents. In our opinion, once it is brought to the notice of the Court that it has made an order in breach of the principles of natural justice, it becomes the duty of the Court to recall that order so that all the parties involved get an opportunity of being heard in the matter.

2. In our opinion, as now it is clear from the record that the Court disposed off the petition in favour of the petitioners without all the respondents being served, it was the duty of the petitioners who were seeking orders in their favour to point out to the Court that the respondents who were ordered to be joined as respondents by the Court were not served with the petition. It is clear from the record that the petitioners firstly did not join parties who were

necessary parties as respondents, when on their application the Court directed the petitioners to join them as respondents, the petitioners did not carry out the amendment immediately, ultimately after much delay the amendment was carried out but the newly added respondents were not served. Thus, the petitioners frustrated the attempt made by the Court to have before it all the necessary parties, then the petitioners came before the Court with signed minutes of order which was an order in their favour, suppressed from the Court the fact that the parties that have been ordered to be joined as respondents by the Court have not been served with the petition and obtained the order from the Court. In our opinion, the conduct of the petitioners of securing orders from the Court by suppressing this relevant information from the Court is highly objectionable. In our opinion, while allowing the notice of motion, cost will have to be imposed on the original petitioners. Notice of motion is therefore granted in terms of prayer clause (a). The original petitioners are directed to pay to the present applicant as and by way of cost of this notice of motion Rs.10,000/-.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary of the Court.

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Certified copy is expedited.

(D.K. DESHMUKH J.)

(A.A. SAYED J.)